

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1196/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/6/13/1

**Bills Committee on Insurance Companies (Amendment) Bill 2014**

**Minutes of the fifteenth meeting on  
Tuesday, 24 March 2015, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon Starry LEE Wai-king, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Hon KWOK Wai-keung  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon SIN Chung-kai, SBS, JP
- Members absent** : Hon WONG Kwok-kin, SBS  
Hon WONG Yuk-man
- Public officers attending** : Mr Eddie CHEUNG  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services) 2

Ms Joan HUNG  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) (Special Duties)

Ms Annie CHOI, JP  
Commissioner of Insurance

Miss Emma WONG  
Senior Government Counsel  
Department of Justice

Mr Peter SZE  
Senior Government Counsel  
Department of Justice

**Clerk in attendance :** Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance :** Miss Winnie LO  
Assistant Legal Adviser 7

Mr Hugo CHIU  
Senior Council Secretary (1)6

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Action

**I Meeting with the Administration**

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)614/14-15(01) — List of follow-up actions arising  
from the discussion at the  
meeting on 3 March 2015

LC Paper No. CB(1)668/14-15(01) — List of follow-up actions arising  
from the discussion at the  
meeting on 9 March 2015

LC Paper No. CB(1)668/14-15(02) — Administration's response to  
issues raised at the meetings on  
3 and 9 March 2015)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)369/14-15(03) — Administration's paper on "Index for Clause-by-clause Examination"
- LC Paper No. CB(1)1494/13-14(01) — Administration's paper on Insurance Companies (Amendment) Bill 2014
- LC Paper No. CB(3)581/13-14 — The Bill
- LC Paper No. CB(1)1636/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- File Ref: C2/2/50C — Legislative Council Brief
- LC Paper No. LS50/13-14 — Legal Service Division Report
- LC Paper No. CB(1)1494/13-14(02) — Background brief on Insurance Companies (Amendment) Bill 2014 prepared by the Legislative Council Secretariat)

Discussion

The Committee deliberated (Index of proceedings attached at **Appendix**).

Admin Follow-up actions to be taken by the Administration

2. The Administration was requested to take the following follow-up actions:

*Impacts of revocation or suspension of the licence of an insurance intermediary (under clause 71)*

- (a) The proposed new section 64ZS(a) of the Insurance Companies Ordinance (Cap. 41) ("ICO") provided that a revocation or suspension of the licence of an insurance intermediary licensed by the independent Insurance Authority ("IIA") did not avoid or affect an agreement, transaction or arrangement entered into or arranged by the insurance intermediary, regardless of whether the agreement, transaction or arrangement was entered into or

arranged before or after the revocation or suspension. The Administration was requested to:

- (i) address a member's concern that the phrase "or after" might create a loophole for an insurance intermediary with its licence revoked or suspended to continue with its regulated activities; and
- (ii) consider the suggestion to specify explicitly in the provision that the agreement, transaction or arrangement concerned must not be related to insurance business conducted by the intermediary.

*Determination of whether a person is fit and proper (under clause 71)*

- (b) Subsection (1)(e) of the proposed new section 64ZZA of ICO provided that in determining whether an insurance intermediary applying for a licence was fit and proper, IIA had to consider whether any disciplinary action had been taken against the person by authorities, including inter alia, the Monetary Authority (i.e. Hong Kong Monetary Authority "HKMA"), the Securities and Futures Commission ("SFC"), the Mandatory Provident Fund Schemes Authority ("MPFA"), and other regulatory bodies performing similar functions as IIA. The Administration was requested to:
  - (i) provide information on the respective retention periods for disciplinary actions of their regulatees by HKMA, SFC and MPFA, and if the three authorities had different retention periods, address a member's concern that the applicant might be subject to different regulatory standards; and
  - (ii) explain the mechanism under which IIA could obtain the disciplinary records from or be informed of the disciplinary actions taken by the authorities under section 64ZZA(1)(e), in particular, other regulatory bodies under subsection (1)(e)(iv).

*Drafting issue*

- (c) The proposed new section 64ZZH(3) of ICO (under clause 71) provided that IIA might seek funding from the Legislative Council for costs and expenses incurred by its engaged investigators. In

the light of members' comments, the Administration had agreed to consider refining the drafting, like "IIA can seek approval of the Legislative Council for funding to pay..." ("保監局可向立法會申請撥款以支付..."), to better reflect the policy intent.

## **II Any other business**

### Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 14 April 2015 at 4:30 pm, and the meeting scheduled for 27 April 2015 would be re-scheduled. The Bills Committee might also hold additional meetings.

*(Post-meeting note: The meeting originally scheduled for 27 April 2015 was rescheduled to 20 April 2015, from 10:45 am to 12:45 pm. Two additional meetings were scheduled for 10 April 2015 and 7 May 2015. Members were informed of the relevant details vide LC Paper No. CB(1)683/14-15 issued on 25 March 2015.)*

4. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 1  
Legislative Council Secretariat  
24 August 2015

**Proceedings of the  
Bills Committee on Insurance Companies (Amendment) Bill 2014  
Fifteenth meeting on Tuesday, 24 March 2015, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000200 – 000229	Chairman	Introductory remarks	
000230 – 001729	Administration Chairman Ms Cyd HO	<p>Briefing by the Administration on the paper "Administration's response to issues raised at the meetings on 3 and 9 March 2015" [LC Paper No. CB(1)668/14-15(02)]</p> <p>In response to the Chairman's enquiry about the comparison of the processing time for the appointments under the proposed new sections 64Q(1) to (4) of the Insurance Companies Ordinance (Cap. 41)("ICO") by the existing three self-regulatory organizations ("SROs") and the independent Insurance Authority ("IIA"), the Administration advised that:</p> <p>(a) as the three SROs were not regulators and did not have the power to seek relevant information from other regulators, they usually did not take long to complete vetting of the appointments. On the other hand, IIA would be a regulator and could seek relevant information from other regulators if necessary. The vetting process was expected to be more complex and the processing time would thus be longer; and</p> <p>(b) the actual processing time for individual cases would depend on the circumstances pertaining to the case. It was envisaged that the timeframe of IIA for vetting and processing proposed appointments would be similar to that of other financial regulators including the Securities and Futures Commission ("SFC") and the Mandatory Provident Fund Schemes Authority ("MPFA").</p> <p>Ms HO requested the Secretariat to prepare a summary list of follow-up actions undertaken by the Administration, including the proposed Committee Stage amendments and outstanding issues to be addressed, and matters which should be referred to the future IIA.</p>	

Time Marker	Speaker	Subject(s)	Action Required
<b>Clause-by-clause examination of the Bill</b>			
001730 – 002640	Deputy Chairman Administration Chairman	<p><i>64ZO. Licensed insurance broker companies without responsible officers</i></p> <p><i>64ZP. Licence revoked on death, dissolution, etc. of licensee</i></p> <p><i>64ZQ. Licence revoked or suspended on licensed insurance intermediary's request</i></p> <p><i>64ZR. Effect of suspension under this Subdivision</i></p> <p><i>64ZS. Revocation or suspension of licence does not avoid or affect agreement, etc.</i></p> <p><i>64ZT. Requirement to transfer records on revocation or suspension of licence</i></p> <p>The proposed new section 64ZS(a) of ICO provided that a revocation or suspension of the licence of an insurance intermediary did not avoid or affect an agreement, transaction or arrangement entered into or arranged by the intermediary, regardless of whether the agreement, transaction or arrangement was entered into or arranged before <u>or after</u> the revocation or suspension. The Administration was requested to:</p> <p>(a) address the Deputy Chairman's concern that the phrase "or after" might create a loophole for an insurance intermediary with its licence revoked or suspended to continue with its regulated activities; and</p> <p>(b) consider the Deputy Chairman's suggestion to specify explicitly in the provision that the agreement, transaction or arrangement concerned must not be related to insurance business conducted by the intermediary.</p> <p>The Administration advised that the proposed new section 64ZS(a) of ICO was modeled on similar provisions in the Securities and Futures Ordinance (Cap. 571) ("SFO") and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO").</p>	The Administration to take action as per paragraphs 2(a) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
002641 – 010425	Mr NG Leung-sing Chairman Administration Ms Cyd HO Mr YIU Si-wing	<p><i>64ZU. Permission to carry on business operations on revocation or suspension of licence</i></p> <p><b><i>Subdivision 4—Renewal</i></b></p> <p><i>64ZV. Renewal of licences</i></p> <p><i>64ZW. Amendment, revocation and imposition of conditions on renewal of licences</i></p> <p><i>64ZX. Validity of licences for which applications have been made under section 64ZV</i></p> <p><i>64ZY. Validity of licences renewed under section 64ZV</i></p> <p><b><i>Subdivision 5—Supplementary Provisions</i></b></p> <p><i>64ZZ. Applicants to provide information</i></p> <p><i>64ZZA. Determination of fit and proper</i></p> <p>Subsection (1)(e) of the proposed new section 64ZZA of ICO provided that in determining whether an insurance intermediary applying for a licence ("a licence applicant") was fit and proper, IIA had to consider whether any disciplinary action had been taken against the person by authorities, including the Monetary Authority (i.e. Hong Kong Monetary Authority "HKMA"), SFC, MPFA, and other authorities or regulatory organizations performing similar functions as IIA. At Ms HO's request, the Administration was requested to provide information on the respective retention periods of disciplinary actions of their regulatees by HKMA, SFC and MPFA, and if these authorities had different retention periods, address her concern that the applicant might be subject to different regulatory standards.</p> <p>Mr NG enquired whether IIA would, in determining whether a licence applicant was fit and proper, consider disciplinary actions taken by other professional bodies (like the Hong Kong Institute of Certified Public Accountants), and if so, the relevant mechanism for obtaining such information.</p>	<p>The Administration to take action as per paragraph 2(b)(i) of the minutes</p>



Time Marker	Speaker	Subject(s)	Action Required
		<p>The Chairman enquired whether IIA would consider relevant actions (like termination of membership of the licence applicants) taken by the three SROs in processing applications for licences.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) under the proposed new section 64ZZA(1)(c) and (1)(e)(iv) of ICO, IIA would consider disciplinary actions (which could reflect the reputation, character, reliability and integrity of the licence applicants) taken by other regulators and professional bodies both local and overseas as necessary; and</li> <li>(b) IIA would consider the actions, including termination of membership, taken by the three SROs if such actions were relevant to the determination of whether the licence applicant was fit and proper.</li> </ul> <p>The Administration was requested to explain the mechanism under which IIA could obtain the disciplinary records from or be informed of the disciplinary actions taken by the authorities under section 64ZZA(1)(e), in particular, other regulatory bodies under subsection (1)(e)(iv).</p> <p>Ms HO's views and enquiries as follows:</p> <ul style="list-style-type: none"> <li>(a) the scope of the proposed new section 64ZZA(3) of ICO might be too broad;</li> <li>(b) whether IIA would, in considering the financial status or solvency of a licence applicant, have regard to the debt owed by the applicant; and</li> <li>(c) how IIA would seek information on the financial status or solvency of a licence applicant.</li> </ul> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) in determining whether an insurance intermediary was fit and proper, IIA would consider three main aspects, i.e. integrity, qualifications and financial status;</li> </ul>	<p>The Administration to take action as per paragraph 2(b)(ii) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) IIA would have power to examine and inspect relevant records to find out the financial status or solvency of the licence applicant. After granting a licence, if IIA identified problems of concern, it would increase the frequency of examination and inspection of the licensees concerned; and</p> <p>(c) in comparison with authorized insurers, insurance intermediaries would be subject to less stringent requirements on financial status.</p> <p>Responding to Mr YIU's enquiry, the Administration said that IIA would require authorized insurers to submit financial statements on a regular basis. If necessary, IIA could require authorized insurers in vulnerable financial positions to submit financial statements more frequently. As for insurance intermediaries, since insurance broker companies acted in their clients' interests and they were not appointed by insurers, they were also required to submit financial statements to IIA regularly for examination of their financial status. ICO set out specific requirements in relation to minimum capital and professional indemnity insurance, etc. with which insurance broker companies had to comply. Unlike insurance brokers, insurance agencies were not required to do so as they were appointed by insurance companies which were legally liable for their acts.</p> <p>Mr YIU and the Chairman enquired about protection for premiums paid by policy holders, if the insurance intermediary had become insolvent, and if the intermediary misled the policy holder to pay the premium to it instead of the authorized insurer.</p> <p>The Administration responded that:</p> <p>(a) an insurance policy was a contract signed between an insurer and a policy holder. The insurer had to honour the obligations in the contract even if the insurance intermediary concerned had committed misconduct; and</p> <p>(b) an insurance broker was required to purchase professional indemnity insurance, which would cover the loss of a policy holder</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>resulted from the defunct and/or misconduct of an insurance broker if the policy holder could provide evidence on premium payment made.</p>	
<p>010426 – 011433</p>	<p>Administration Ms Cyd HO Mr SIN Chung-kai</p>	<p><i>64ZZB. Procedural requirements for rejecting application, or imposing or amending conditions</i></p> <p><i>64ZZC. Form of licence</i></p> <p><i>64ZZD. Duty to notify Authority of change in partners, directors or controllers</i></p> <p><i>64ZZE. Offence to provide false information in connection with application for licence or approval</i></p> <p>In response to Ms HO's enquiry about the proposed new section 64ZZC(6)(b) of ICO, the Administration advised that the policy intent was to prohibit a travel agent which was a licensed insurance agency (restricted scope travel business) from selling annual travel insurance policies. It was because the qualification examination for licensed insurance agencies of restricted scope travel business was different from those for licensed insurance intermediaries of other lines of business. The public could purchase annual travel insurance policies through other licensed insurance intermediaries.</p> <p>Responding to Mr SIN's enquiry regarding the duty of licensees to notify IIA of any changes in partners, directors and controllers under the proposed new section 64ZZD, the Administration advised that:</p> <p>(a) a licensed insurance agency/broker company had to notify IIA within one month before it proposed to change its partners, directors or controllers. The change could not take effect if IIA raised objection; and</p> <p>(b) in considering whether the proposed partners, directors or controllers of a licensed intermediary were fit and proper, IIA would make reference to, inter alia, disciplinary actions taken by other regulators on the persons concerned.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011434 – 012629	Mr NG Leung-sing Administration Ms Cyd HO Mr YIU Si-wing	<p><b><i>Division 4—Inspection and Investigation</i></b></p> <p><b><i>Subdivision 1—Inspection and Investigation without Warrant</i></b></p> <p><i>64ZZF. Power to conduct inspection</i></p> <p>Mr NG's enquiry about what business premises IIA's inspectors might enter under the proposed new section 64ZZF(2)(a) of ICO, and the arrangement if an insurance intermediary used his/her residential flat as the registered business premises.</p> <p>The Administration responded that in general, IIA's inspectors could enter any business premises. The reference of "business premises" in the proposed new section 64ZZF(2)(a) of ICO referred to premises used by the licensed insurance intermediary or its agent for carrying out regulated activities. IIA's inspectors could not enter domestic premises (even if the premises were used as the registered business premises) unless they obtained a warrant from a magistrate.</p> <p>Ms HO enquired why the Bill applied similar inspection and investigation procedures for licensed intermediaries (provisions in Division 4 of Part X of ICO) and authorized insurers (provisions in Divisions 2 and 3 of Part VA of ICO).</p> <p>The Administration advised that:</p> <ul style="list-style-type: none"> <li>(a) reference had been made to relevant regulatory regimes of other financial regulators like SFC;</li> <li>(b) there would be proper checks and balances against IIA's inspection and investigation powers;</li> <li>(c) some insurance intermediaries were large multi-national companies and should be subject to stringent requirements similar to those applicable to insurers; and</li> <li>(d) insurance intermediaries which were banks would be subject to the inspection and investigation of HKMA through delegation of</li> </ul>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>powers by IIA with the approval of the Chief Executive in Council.</p> <p>Responding to Mr YIU's enquiry about the term "reasonable time" in the proposed new section 64ZZF(2) of ICO, the Administration advised that:</p> <p>(a) in general, the reasonable man test would be applied in determining whether "reasonable time" had been provided; and</p> <p>(b) IIA would conduct inspections with or without prior notice.</p>	
012630 – 014134	Ms Cyd HO Chairman Administration Deputy Chairman	<p><i>64ZZG. Inspector may require answer, etc. to be verified by statutory declaration</i></p> <p><i>64ZZH. Power to conduct investigation</i></p> <p><i>64ZZI. Investigator may require explanation, etc. to be verified by statutory declaration</i></p> <p><i>64ZZJ. Inspection and investigation powers in relation to authorized institutions</i></p> <p><i>64ZZK. Application to Court of First Instance for inquiry into failure</i></p> <p>The proposed new section 64ZZH(3) of ICO provided that IIA might seek funding from the Legislative Council for costs and expenses incurred by it in engaging investigators. In the light of comments from the Chairman and Ms HO, the Administration was requested to consider refining the drafting, like "IIA can seek approval of the Legislative Council for funding to pay..." ("保監局可向立法會申請撥款以支付..."), to better reflect the policy intent of the provision.</p> <p>The Administration also advised that in drafting the proposed new section 64ZZH(3), reference had been made to the relevant provisions in SFO and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO").</p> <p>Ms HO remarked that the Administration should further elaborate on the proposed new section 64ZZH(6)(b) of ICO, including what</p>	The Administration to take action as per paragraph 2(c) of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>explanations would IIA's investigators require a person to give, how such explanations would be recorded, whether the person was statutorily required to respond to the enquiries, and when the person would be required to make a statutory declaration under the proposed new section 64ZZI.</p> <p>The Administration responded that:</p> <p>(a) when the information asked or sought by IIA's inspectors/investigators was not within a person's knowledge or possession, the person might be required to make a statutory declaration that he/she could not comply with the requirement of IIA's inspectors/investigators for that reason; and</p> <p>(b) the proposed new section 64ZZL of ICO set out the offences for non-compliance with IIA's inspections and investigations.</p> <p>The Deputy Chairman enquired whether the inspection and investigation procedures provided in the Bill were consistent with those under other financial regulatory regimes.</p> <p>The Administration responded in the affirmative and pointed out that reference had been made to the relevant provisions in SFO, MPFSO and AMLO.</p> <p>Responding to Ms HO's enquiry, the Administration remarked that IIA would apply the same standard in conducting inspections and investigations on authorized insurers and insurance intermediaries.</p>	
014135 – 015133	Ms Cyd HO Mr YIU Si-wing Administration	<p><i>64ZZL. Offences in relation to inspections and investigations</i></p> <p>Responding to Ms HO's concern about how the phrase "with intent to defraud" in the proposed new section 64ZZL(2) of ICO would be interpreted, the Administration advised that:</p> <p>(a) in general, the burden of proof would be on the prosecutor who would have to prove the accused's guilt beyond reasonable doubt (which was a very high standard of proof),</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>and the court would need to consider all relevant facts of the case in determining whether to convict the accused; and</p> <p>(b) "intent to defraud" could be found in a number of legislation, including offences relating to intermediaries under MPFSO and AMLO.</p> <p>Mr YIU enquired about the meaning of "a specified requirement" in the proposed new section 64ZZL(1) of ICO (which provided that "a person commits an offence if the person, without reasonable excuse, fails to comply with a specified requirement imposed on the person.")</p> <p>The Administration advised that:</p> <p>(a) "specified requirement" was defined in the proposed new section 64ZZL(11) of ICO, and would be made by IIA's inspectors and investigators;</p> <p>(b) the inspector/investigator appointed by IIA would be provided with a copy of the appointment, which had to be produced to the relevant parties in accordance with the proposed new sections 64ZZF(8) and 64ZZH(5) of ICO; and</p> <p>(c) IIA would bear the ultimate responsibilities for its inspections and investigations.</p>	
015134 – 015234	Chairman	Dates of next two meetings	